
Watts Fencing – Terms & Conditions of Trade

1. Definitions

- 1.1 “Watts Fencing” means Graham & Katherine Morley ATF The Morley Family Trust T/A Watts Fencing, its successors and assigns or any person acting on behalf of and with the authority of Graham & Katherine Morley ATF The Morley Family Trust T/A Watts Fencing.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting Watts Fencing to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by Watts Fencing to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between Watts Fencing and the Client in accordance with clause 6 below.
- 1.5 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and Watts Fencing.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 Watts Fencing shall only be responsible for their performance to the party that contracts them to undertake the Services and shall not be responsible to any third party irrespective of their relationship to the Client.
- 2.5 Where the Client is requesting or organising Watts Fencing to provide Services is acting with or on behalf of any third party (including but not limited to multiple property owners and/or contractors to any fence, etc.) and that third party is intended to be responsible for either the full or part payment of the Price, then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.
- 2.6 The Client accepts and acknowledges that in the event that Watts Fencing is denied access to the worksite on the agreed start date, then Watts Fencing reserves the right to charge the Client for all costs incurred by Watts Fencing (including, but not limited to, any loss of profits, employee wages, mileage up to a minimum charge of ten percent (10%) of the Price).
- 2.7 The Client accepts that the height nominated in the quote shall be the maximum height provided, by the same token, the heights may vary depending on construction and land level.
- 2.8 The Client acknowledges and agrees that Watts Fencing’s thirty centimeter by forty centimeter (30cm x 40cm) sign may be displayed in a prominent position on the completed fence for no less a period than four (4) weeks after completion of the Services.
- 2.9 The Client agree to comply with the provisions of all statues, regulations and bylaws of government, local and other public authorities that may be applicable to the Services. And provide Watts Fencing with this information when accepting quotation.

3. Quotation

- 3.1 Unless expressly stated by Watts Fencing, the quoted Price shall not include:
- (a) “eye level” or “special constructions” requests, all quotes are based on standard fences constructed to existing land levels and/or slopes. Special requests need to be addressed at the time of quotation;
 - (b) filling of gaps that may be present under new fence due to landscaping issues, should this occur such gaps can be covered or filled on request at an extra cost;
 - (c) unless otherwise agreed, the re-attachment of adjoining fences and gates.
- 3.2 In the event the Client requires any of the above, the Price will be adjusted accordingly to include the Services in accordance with clause 6.2.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that Watts Fencing shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Watts Fencing in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Watts Fencing in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Watts Fencing; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Client shall give Watts Fencing not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Watts Fencing as a result of the Client’s failure to comply with this clause.

6. Price and Payment

- 6.1 At Watts Fencing’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Watts Fencing to the Client; or
 - (b) the Price as at the date of delivery of the Goods according to Watts Fencing’s current price list; or
 - (c) Watts Fencing’s quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of sixty (60) days.

Watts Fencing – Terms & Conditions of Trade

- 6.2 Watts Fencing reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to hidden or unidentifiable difficulties (including but not limited to, poor weather conditions, limitations to accessing the site, health hazards (such as the discovery of hazards or other foreign materials) prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes or wiring, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Watts Fencing in the cost of materials and labour which are beyond Watts Fencing's control.
- 6.3 Variations will be charged for on the basis of Watts Fencing's quotation, and will be detailed in writing, and shown as variations on Watts Fencing's invoice. The Client shall be required to respond to any variation submitted by Watts Fencing within ten (10) working days, during this time the Client shall allow Watts Fencing to halt all Services until such time as the Client agree to such variations. Failure to do so will entitle Watts Fencing to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Watts Fencing's sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Watts Fencing, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with Watts Fencing's payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Watts Fencing.
- 6.6 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement.
- 6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Watts Fencing.
- 6.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Watts Fencing nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Watts Fencing an amount equal to any GST Watts Fencing must pay for any supply by Watts Fencing under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery

- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Watts Fencing's address; or
 - (b) Watts Fencing (or Watts Fencing's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 At Watts Fencing's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.3 Subject to clause 7.4 it is Watts Fencing responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.4 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Watts Fencing claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Watts Fencing's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Watts Fencing that the site is ready.
- 7.5 The Client acknowledges and accepts that where the Client wishes to postpone the Services for any such reason (including but not limited to, permit issues, neighbour disputes, access/power arrangements, construction changes or any other reason beyond Watts Fencing's control), that Watts Fencing must be notified within three (3) business day of the proposed commencement date as agreed to between both parties. Where such notice is received inside this timeframe, Watts Fencing reserves the right to charge a reasonable fee for the delay in the commencement of the Services.
- 7.6 Watts Fencing may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.7 Any time specified by Watts Fencing for delivery of the Goods is an estimate only and Watts Fencing will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Watts Fencing is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Watts Fencing shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Watts Fencing is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Watts Fencing is sufficient evidence of Watts Fencing's rights to receive the insurance proceeds without the need for any person dealing with Watts Fencing to make further enquiries.
- 8.3 If the Client requests Watts Fencing to leave Goods outside Watts Fencing's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.

Watts Fencing – Terms & Conditions of Trade

- 8.4 The Client must be on site to supervise the setting out of the fence construction string line. The Client will ensure the placement of boundary pegs or markers prior to fence construction. If the Client fail to comply with this clause then Watts Fencing accepts no responsibility for installation decisions that need to be made by Watts Fencing in the Client absence.
- 8.5 The Client acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow Watts Fencing clear access along the proposed fence line prior to commencement of work by Watts Fencing unless otherwise agreed in writing between Watts Fencing and the Client. Under no circumstances will Watts Fencing handle removal of asbestos product.
- 8.6 Whilst Watts Fencing will take all due care during installation Watts Fencing will not accept any responsibility for tiles or pavers damaged during installation.
- 8.7 Where fencing is installed on a retaining wall Watts Fencing shall not be liable for any movement in the fence due to consolidation or the movement of soil or any other component of the retaining wall.
- 8.8 Watts Fencing shall not be responsible for digging land out under fence lines nor removal of soil from the worksite.
- 8.9 Timber is a natural product and as such colour, shade tone, markings, and veining may vary from samples provided. Whilst Watts Fencing will make every effort to match sales samples to the finished Goods Watts Fencing accepts no liability whatsoever where the samples differ to the finished Goods.
- 8.10 The Client acknowledge that Goods supplied may:
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
 - (b) expand, contract, warp, twist or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 8.11 Watts Fencing shall not be liable if the Client do not follow Watts Fencing's recommendation to:
- (a) not paint new palings fence for a minimum of one hundred and eighty (180) days; and
 - (b) once ready for painting it is recommended that both sides of the fence be painted; and
 - (c) water down the new fence during warmer months to avoid "drying out" too quickly.

9. Client Responsibility

- 9.1 It is the intention of Watts Fencing and agreed by the Client that:
- (a) Watts Fencing is not responsible for the removal of rubbish (including but not limited to excess soil, old bricks, old concrete) from or clean-up of the worksite and/or restoring of garden beds. This is the responsibility of the Client or the Client's agent;
 - (b) the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation;
 - (c) the Client shall:
 - (i) obtain (at the Client's expense) all planning and building approvals (including any council permits) required for the Services prior to commencement of the Services unless otherwise agreed in writing between the Client and Watts Fencing. In the event Watts Fencing agrees to obtain the approvals then the cost of such shall be in addition to the Price and shown as a variation in accordance with clause 6.2; and
 - (ii) remove from the work area any furniture, personal effects or other property that are within six hundred millimetres (600mm) of the fence line (including but not limited to taps, watering systems, pot and garden plants, ornaments, signage, gates, pergolas, decking, paving, clothesline, pool equipment, water/gas/power/telephone cables or pipes etc.) likely to impede Watts Fencing in order to minimise the risk of injury or any possible damage. Watts Fencing accepts no responsibility for damages cause to such items through the Client's failure to comply with this clause; and
 - (iii) provide Watts Fencing with clear and free access to the worksite to enable Watts Fencing to complete the Services and/or to remedy any defects after the completion date. Watts Fencing shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) during the normal construction process unless due to negligence of Watts Fencing; and
 - (iv) in the event Watts Fencing's require access, in order to undertake the Services, to an adjoining or adjacent property or land to the nominated job site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the process or delivering the Services. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by Watts Fencing's in gaining permission to access and/or use the property through any legal process that may be deemed necessary; and
 - (v) provide power and water for the installation of the Goods, if the Client cannot accommodate this condition the Client agrees to indemnify Watts Fencing for all additional costs incurred (including but not limited to the hire of a generator, cart water etc.).

10. Underground Locations

- 10.1 Location of underground services by a licensed service locator is required prior to commencement of any Services. The Client must consult all service providers for an "on-site service location" and any potential underground services should be clearly marked on site, including but not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, water irrigation systems and any other services that may be on site. Whilst Watts Fencing will take all care to avoid damage to any underground services the Client agree to indemnify Watts Fencing in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified. The Client will be warned that 'Dial Before you Dig' is of no use in fencing on private properties and are not to supply or reply on this information solely. If the Client request Watts Fencing to engage the service locator then this shall be in addition to the Price.

11. Surplus Goods

- 11.1 Unless otherwise stated elsewhere in this contract;
- (a) only suitable new Goods will be used;
 - (b) demolished Goods remain the Client property unless otherwise allowed for in the quotation; and

Watts Fencing – Terms & Conditions of Trade

(c) Goods which Watts Fencing brings to the site which are surplus remain the property of Watts Fencing. Watts Fencing shall remove all surplus Goods within one to two (1-2) days following completion of the Services.

12. Insurance

12.1 Watts Fencing has Public Liability insurance in place (to cover liabilities to third parties for death or personal injury or damage to property for an amount of not less than five million dollars (\$5m) together with Employer's Liability and Worker's Compensation Insurance. Watts Fencing shall on request supply the Client with a certificate of currency for said covers, otherwise, Watts Fencing authorises the Client the right to contact the underwriters regarding the insurance covers to check they are current and valid, detailed noted below:

- (a) Public Liability: Westfarmers Federation Insurance (contact 8786 1111 Policy No 05pl 9900411;
- (b) Workcover: Gallagher Basset P/L (contact 9297 9277) Employer No. 11842273.

13. Title

13.1 Watts Fencing and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid Watts Fencing all amounts owing to Watts Fencing; and
- (b) the Client has met all of its other obligations to Watts Fencing.

13.2 Receipt by Watts Fencing of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

13.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 13.1:

- (a) the Client is only a bailee of the Goods and must return the Goods to Watts Fencing on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Watts Fencing and must pay to Watts Fencing the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Watts Fencing and must pay or deliver the proceeds to Watts Fencing on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Watts Fencing and must sell, dispose of or return the resulting product to Watts Fencing as it so directs.
- (e) the Client irrevocably authorises Watts Fencing to enter any premises where Watts Fencing believes the Goods are kept and recover possession of the Goods.
- (f) Watts Fencing may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Watts Fencing.
- (h) Watts Fencing may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

14. Personal Property Securities Act 2009 ("PPSA")

14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

14.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to Watts Fencing for Services – that have previously been supplied and that will be supplied in the future by Watts Fencing to the Client.

14.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Watts Fencing may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Watts Fencing for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Watts Fencing;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Watts Fencing;
- (e) immediately advise Watts Fencing of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

14.4 Watts Fencing and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

14.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

14.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

14.7 Unless otherwise agreed to in writing by Watts Fencing, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

14.8 The Client must unconditionally ratify any actions taken by Watts Fencing under clauses 14.3 to 14.5.

14.9 Subject to any express provisions to the contrary (including those contained in this clause 14) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

Watts Fencing – Terms & Conditions of Trade

15. Security and Charge

- 15.1 In consideration of Watts Fencing agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies Watts Fencing from and against all Watts Fencing's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Watts Fencing's rights under this clause.
- 15.3 The Client irrevocably appoints Watts Fencing and each director of Watts Fencing as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 16.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify Watts Fencing in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Watts Fencing to inspect the Goods.
- 16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 16.3 Watts Fencing acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Watts Fencing makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Watts Fencing's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Client is a consumer within the meaning of the CCA, Watts Fencing's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If Watts Fencing is required to replace the Goods under this clause or the CCA, but is unable to do so, Watts Fencing may refund any money the Client has paid for the Goods.
- 16.7 If the Client is not a consumer within the meaning of the CCA, Watts Fencing's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Watts Fencing at Watts Fencing's sole discretion;
 - (b) limited to any warranty to which Watts Fencing is entitled, if Watts Fencing did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
 - (b) Watts Fencing has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, Watts Fencing shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Watts Fencing;
 - (e) fair wear and tear, any accident, or act of God.
- 16.10 Subject to clause 16.1, customised, or non-stocklist items or Incidental Items made or ordered to the Client's specifications are not acceptable for credit or return.

17. Intellectual Property

- 17.1 Where Watts Fencing has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Watts Fencing. Under no circumstances may such designs, drawings and documents be used without the express written approval of Watts Fencing.
- 17.2 The Client warrants that all designs, specifications or instructions given to Watts Fencing will not cause Watts Fencing to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Watts Fencing against any action taken by a third party against Watts Fencing in respect of any such infringement.
- 17.3 The Client agrees that Watts Fencing may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Watts Fencing has created for the Client.

18. Default and Consequences of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Watts Fencing's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes Watts Fencing any money the Client shall indemnify Watts Fencing from and against all costs and disbursements incurred by Watts Fencing in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Watts Fencing's contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Watts Fencing may have under this contract, if a Client has made payment to Watts Fencing, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Watts Fencing under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.

Watts Fencing – Terms & Conditions of Trade

- 18.4 Without prejudice to Watts Fencing's other remedies at law Watts Fencing shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Watts Fencing shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Watts Fencing becomes overdue, or in Watts Fencing's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Watts Fencing;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 19. Cancellation**
- 19.1 Without prejudice to any other remedies Watts Fencing may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Watts Fencing may suspend or terminate the supply of Goods to the Client. Watts Fencing will not be liable to the Client for any loss or damage the Client suffers because Watts Fencing has exercised its rights under this clause.
- 19.2 Watts Fencing may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Watts Fencing shall repay to the Client any money paid by the Client for the Goods. Watts Fencing shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 Watts Fencing requires notice in writing within three (3) clear working days of the proposed commencement date in the event that the Client cancels the scheduled Services. The Client shall be liable for any and all loss incurred (whether direct or indirect) by Watts Fencing as a direct result of the cancellation (including, but not limited to, any loss of profits). The Client acknowledges and accepts that:
- (a) any such notice received within this timeframe will incur a ten percent (10%) cancellation fee; or
 - (b) where cancellation is due to circumstances that are beyond Watts Fencing's control (including but not limited to, permit issues, neighbour disputes, access/power arrangements, construction changes, etc.) shall incur a thirty percent (30%) cancellation fee.
- 20. Privacy Act 1988**
- 20.1 The Client agrees for Watts Fencing to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Watts Fencing.
- 20.2 The Client agrees that Watts Fencing may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 20.3 The Client consents to Watts Fencing being given a consumer credit report to collect overdue payment on commercial credit.
- 20.4 The Client agrees that personal credit information provided may be used and retained by Watts Fencing for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 20.5 Watts Fencing may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.6 The information given to the CRB may include:
- (a) personal information as outlined in 20.1 above;
 - (b) name of the credit provider and that Watts Fencing is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Watts Fencing has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Watts Fencing, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.7 The Client shall have the right to request (by e-mail) from Watts Fencing:
- (a) a copy of the information about the Client retained by Watts Fencing and the right to request that Watts Fencing correct any incorrect information; and
 - (b) that Watts Fencing does not disclose any personal information about the Client for the purpose of direct marketing.
- 20.8 Watts Fencing will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 20.9 The Client can make a privacy complaint by contacting Watts Fencing via e-mail. Watts Fencing will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint.

Watts Fencing – Terms & Conditions of Trade

In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

21. Building and Construction Industry Security of Payment Act 2002

- 21.1 At Watts Fencing's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 21.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

22. General

- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which Watts Fencing has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in Victoria.
- 22.3 Subject to clause 16, Watts Fencing shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Watts Fencing of these terms and conditions (alternatively Watts Fencing's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 Watts Fencing may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 22.5 The Client cannot licence or assign without the written approval of Watts Fencing.
- 22.6 Watts Fencing may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Watts Fencing's sub-contractors without the authority of Watts Fencing.
- 22.7 The Client agrees that Watts Fencing may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Watts Fencing to provide Goods to the Client.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.